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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

3/023/0015

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December 14, 2009

CERTIFIED MAIL  
7005 2570 0000 4801

Robert Steele  
1055 North 400 East  
Nephi, UT 84648

Allen Young  
Young, Kester & Petro  
75 South 300 West  
Provo, Utah 84601

Subject: Findings of Fact, Conclusions, and Order for Violation MC-2009-42-01 and MC-2009-42-03,  
Robert Steele, Gardner Canyon Mine, S/023/0015

Dear Mr. Steele:

On December 3, 2009, an Informal Conference was held to review the facts of violation and assessments for Cessation Orders MC-2009-42-01 and MC-2009-42-03. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the findings of fact, conclusions, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty of \$1,430.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Sincerely,

Dana Dean, P.E.  
Associate Director  
Assessment Conference Officer

dd/vs  
Enclosures

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**IN THE MATTER OF THE  
INFORMAL FACT OF  
VIOLATION AND ASSESSMENT  
CONFERENCE for CESSATION  
ORDERS AND PROPOSED  
ASSESSMENTS; CESSATION  
ORDERS MC-2009-42-01, and MC-  
2009-42-03 ROBERT STEELE,  
GARDNER CANYON MINE,  
S/023/0015, JUAB COUNTY,  
UTAH**

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**CAUSE NO. S/023/0015**

Dana Dean, Associate Director Division of Oil, Gas and Mining served as the Hearing Officer. The hearing was conducted as an informal adjudicative proceeding. Wayne Western, Division Engineer presented the facts and arguments in support of the Cessation Orders. Lynn Kunzler, Assessment Officer, presented the arguments concerning the determination of the assessment amounts. Paul Baker, Minerals Program Manager was also in attendance and participated for the Division. Robert Steele and Allen Young represented the mine owners. No recording or transcript of the conference was made.

## **FINDINGS OF FACT**

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

1. The Request for an informal assessment conference was delivered to the Division on October 22, 2009.
2. Notice of the Informal Assessment Conference was provided as required.
3. The Division implemented Rules requiring bonding of small mines on February 23, 2006, and gave Mr. Steele until December of 2006 to comply with the new requirement.
4. On April 24, 2007, the Division Issued Cessation Order MC-07-04-01, requiring the cessation of all operations at the Gardner Canyon Mine until a bond could be posted in a form accepted by the Division.
5. On May 5, 2007 Mr. Steele informed the Division that because the Gardner Canyon Mine was located within US Forest boundaries, the US Forest Service held a \$40,000 letter of credit as a performance bond.
6. On August 8, 2007, the Division contacted Mr. Steele and let him know that the bond would need to name the Division as a co-beneficiary in order to meet the requirements of the law. Mr. Steele indicated that he would contact the bank the next day to begin the process of naming the Division as a co-beneficiary.
7. Mr. Steele indicated in this Informal Conference that he had contacted the bank, more than once concerning the change; but the paperwork was "pigeonholed."
8. The Division held an Informal Assessment Conference regarding MC-07-04-01 on September 19, 2007. Mr. Steele testified that he had signed "bond papers" 2 days prior to the conference, and that he had sent them to the Division. As a result of the conference, and based on Mr. Steele's testimony, MC-07-04-1 was vacated.
9. The Division has no record of ever having received a reclamation contract or amended letter of credit for the Gardner Canyon Mine.
10. On April 28, 2008, the Division issued an Order requiring Mr. Steele to:
  - a. Correct the corporate name listed on the bond, or register the corporate name with the Utah Department of Commerce.
  - b. Correct the NOI to name the corporation (if correct)
  - c. Name the Division as a co-beneficiary on the \$40,000 LOC held by the US Forest Service as a performance bond.
  - d. Sign and file a Reclamation Contract with the Division

11. The requirements of the April 28, 2008, Order were reiterated in a letter dated August 5, 2009, and received by Mr. Steele August 12, 2009. This letter allowed Mr. Steele an additional 15 days (until August 20, 2009) to respond to the Order.
12. On September 1, 2009, the Division issued MC-2009-42-01 for failure to provide adequate bond and to comply with all requirements of the April 28, 2008, Division Order.
13. On September 30, 2009, after no communication from Mr. Steele, the Division issued MC-2009-42-03 for failure to abate MC-2009-42-01.

### **CONCLUSIONS OF LAW**

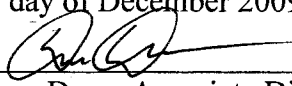
1. Mr. Steele has had more than adequate time to name the Division as a co-beneficiary on the US Forest Service bond, and to clear up the other issues named in the April 28, 2008, Division Order. He has failed to adequately address the issue, despite being issued two Cessation Orders, and a Division Order in just under one and one-half years.
2. The fact of the violation should stand.
3. Because no damage has occurred, and none is likely to occur in the time frame provided in the Order to post a proper bond, the damage points are reduced to 0.

### **ORDER**

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment of \$2,200 for MC-2009-42-01 is now finalized at \$1,430.00.
3. The Failure to Abate Cessation Order (FTACO) is held in abeyance as long as Mr. Steele does the following by February 1, 2010:
  - a. Sign and file a Reclamation Contract with the Division.
  - b. Provide adequate bond in a form acceptable to the Division. This may consist of providing proof that the Division has been named as a co-beneficiary on the US Forest Service bond, or posting separate surety.
  - c. Submit an updated, accurate and, complete NOI.
4. If the above conditions are not met by February 1, 2010 the Failure to Abate Cessation Order may be re-instated and assessed at the maximum amount of \$22,500.00.

SO DETERMINED AND ORDERED this 14<sup>th</sup> day of December 2009

  
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Dana Dean, Associate Director  
Division of Oil, Gas and Mining

UTAH DIVISION OF OIL, GAS AND MINING  
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Robert Steele  
PERMIT: S/023/0015  
VIOLATION: MC-2009-42-01

ASSESSMENT CONFERENCE OFFICER: Dana Dean

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u>17</u>	<u>10</u>
(3) Negligence	<u>23</u>	<u>23</u>
(4) Good Faith	<u>0</u>	<u>0</u>
Total Points	<u>40</u>	<u>33</u>

TOTAL ASSESSED FINE \$1,430.00

NARRATIVE: Because no damage has occurred, and is unlikely to occur before the deadline set in the order, the damage points are reduced to 0, bringing the seriousness points down from 17 to 10.